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| <b>DIVISION OF MINED LAND RECLAMATION</b> |   | <b>PROCEDURE NO.</b> | 3.4.01         |
| <b>PROCEDURES MANUAL</b>                  |   | <b>ISSUE DATE</b>    | April 17, 2006 |
| <b>SUBJECT</b>                            | Suspension and Revocation of DMME<br>Coal Surface Blaster Certification | <b>Section</b>       | CS             |
|   |   | <b>Last Revised</b>  | 8/18/00        |

### **OBJECTIVE AND INTENT:**

The Division shall ensure persons who conduct or supervise blasting operations are properly certified, and comply with the regulatory requirements of the approved program.

### **GENERAL:**

In addition to the permittee, DMLR holds the permittee's certified blaster responsible for specific day to day blasting activities. Consequently, the certified blaster's responsibility for the use of explosives carries with it the potential for certification suspension, revocation, or other enforcement action.

DMLR must consider the employer-employee relationship in determining whether to pursue enforcement action against a DMME certified coal surface blaster. A difference of opinion between the blaster and the permittee may lead to a final decision by the operator (i.e., employer) inconsistent with DMLR performance standards. However, a difference of opinion does not relieve the blaster of the obligation to comply with all appropriate blasting laws, regulations, and performance standards.

A certified blaster owes an affirmative obligation not only to his employer, but also to his certification to ensure compliance with the blasting laws.

### **DEFINITIONS:**

**Willful misconduct** - an act or omission on the part of the blaster which is intentional, voluntary, or conscious, and with disregard or indifference to legal requirements for blasting operations.

### **Types of Suspension:**

1. **Immediate Suspension** - suspension of DMME coal surface blaster certification without prior written notice, at the discretion of the Field Inspector.
2. **Conditional Suspension** - suspension of DMME coal surface blaster certification for a specific duration conditioned upon completion of remedial measures by the blaster (e.g., retraining or retesting). The Technical Training Coordinator (TTC) will coordinate this process.

The **TTC** may specify a time period within which the remedial measures must be completed. When remedial measures are completed and verified by the **TTC**, the certification will be reinstated. If the remedial measures are not completed within the specified time period, the **TTC** may consider revocation. Normally, conditional suspension will not exceed three months.

3. **Suspension for a Definite Period** - punitive suspension of DMME coal surface blaster certification for a specified period. The length of suspension is based upon the nature and severity of the blaster's offense. Special conditions or remedial measures may be required with this action. Consideration should also be given to the blaster's past compliance record and the

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possibility that the permittee or operator may have ordered the blaster to violate the applicable regulations or law.

4. Other Enforcement Action - Examples of such action include, but are not limited to, an official written admonishment or referral to another agency, such as the Bureau of Alcohol, Tobacco and Firearms (ATF), for criminal action. The nature and duration of an enforcement action must be commensurate with the offense.

**Revocation** - Removal of DMME coal surface blaster certification, following written notice to the blaster and an opportunity for hearing before the DM Board of Coal Mining Examiners (§45.1-161.35D).

**Reciprocity** - Recognition by DMME of a blaster certification issued in another state; wherein, the blaster certification program in that state is substantially similar to DMME's and has been approved by OSM.

## **PROCEDURES:**

The Reclamation Field Inspector shall:

- document in the inspection report (**DMLR-ENF-044S**) the blaster's activities alleged to be in violation of the blasting regulations.
- identify the certified blaster (by name and DMME blaster certification number) in the inspection report accompanying the NOV or CO issued to the permittee for a violation of a blasting requirement.
- discuss, when possible, the NOV or CO with the certified blaster and document in the inspection report any statement he or she made concerning the violation. The Inspector's report shall note whether or not a discussion was held with the certified blaster.
- immediately order the cessation of all blasting activities whenever the certified blaster is not in effective control of blasting activities and an imminent danger is present.
- suspend the blaster's certification on site in the event an imminent harm situation is created by the blaster's action. (Imminent harm occurs when the blaster's action poses a serious threat to public safety or the environment.) This suspension period cannot exceed 90 days.
- consult with the **TTC** to determine if any remedial measures must be completed by the blaster (specifying a time period within which he or she must complete such.)

The Inspector can access certified blaster information in Dynaterm (DMME IBM menu- #2 DMLR System; Mined Land Reclamation System Main Menu- #10 Administration - at #2 type in DM identification number or lookup last name).

The Dynaterm system automatically notifies the TTC (by ROOT note) of each NOV and CO that pertains to a blasting violation.

The Assessment Section shall keep the **TTC** apprised of any administrative hearing request and subsequent decision that pertains to a blasting violation.

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The **TTC** shall:

- maintain a file system of all blasting enforcement actions resulting from misconduct of a blaster. The file shall include the NOV or CO number and identification of the applicable regulation, permit condition, or the portion of the Act alleged to be violated.
  1. blasting violations that are documented as being the permittee's primary responsibility will remain in the blaster's file for one year from date of issuance.
  2. blasting violations that are the direct responsibility of the certified blaster will remain in the blaster's file for five years from date of issuance.
- notify the certified blaster by certified mail (return receipt requested) of all documentation placed in his or her file.
- ensure the procedures for suspension or revocation of the DMME blaster certification are consistently and fairly applied.
- review each blasting violation cited by the Reclamation Services Section to determine whether suspension, revocation, or other enforcement action concerning the certified blaster should be pursued.
- immediately notify the appropriate Inspector and Supervisor when a blaster's certification is suspended or revoked.

#### Suspension or Revocation:

The Board of Coal Mining Examiners shall suspend or revoke a blaster's certification for due cause and after the person has been afforded the opportunity to contest such action in a public hearing before the Board. The Board's final decision shall be sent in writing by certified mail. The blaster may seek judicial review of a revocation decision pursuant to Section 45.1-161.35 of the Code of Virginia, as amended.

Should the **TTC**'s review of a blasting violation or the blaster's record indicate that probable cause for suspension or revocation of the DMME coal surface blaster certification exists, the **TTC** shall forward a fact sheet (along with a memo explaining the nature, severity, and history of the blaster's actions):

- through the Chief Engineer and DMLR Director.
- to the DM Chief to file the necessary petition (§4 VAC 25-20-410) and schedule a hearing before the Board of Coal Mining Examiners (§4 VAC 25-20-420).